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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Extrajudicial, summary or arbitrary executions

Report of the Special Rapporteur, Ms. Asma Jahangir, submitted in accordance with Commission resolution 1999/35

Addendum

Mission to the former Yugoslav Republic of Macedonia and Albania

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Introduction

1. The Special Rapporteur conducted a mission to the former Yugoslav Republic of Macedonia from 23 to 25 May, and to Albania from 25 to 28 May 1999. This was the first field mission undertaken by the Special Rapporteur since her appointment in August 1998. The main purpose of the visit was to collect first-hand information as regards the situation in Kosovo, with a view to assessing and evaluating allegations of human rights violations relevant to her mandate reported to have occurred there. The Special Rapporteur wishes to take this opportunity to express her appreciation to the Governments of the former Yugoslav Republic of Macedonia and the Republic of Albania for their assistance in facilitating her mission. She also wishes to thank all the representatives of international agencies, non-governmental organizations and private persons who, despite the urgency of the situation in the region, found time to meet and talk with her during the mission.

2. In the former Yugoslav Republic of Macedonia, the Special Rapporteur was briefed by field staff of the Office of the High Commissioner for Human Rights (OHCHR) in Skopje and also met with officials of the Human Rights Unit of the Organization for Security and Cooperation in Europe (OSCE), the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Office of the United Nations High Commissioner for Refugees (UNHCR). She also held discussions with representatives of non-governmental organizations (NGOs), including Amnesty International and Human Rights Watch. During her stay in the former Yugoslav Republic of Macedonia the Special Rapporteur visited the Cegrane camp, where she had the opportunity to interview a number of refugees who gave testimonies of human rights violations, including extrajudicial killings, they had witnessed before leaving Kosovo. The Special Rapporteur also paid a visit to the border-crossing at Blace, where she spoke with refugees who were awaiting entry into the former Yugoslav Republic of Macedonia. In Skopje the Special Rapporteur also briefly met with Mr. Boris Trajkovski, Deputy Minister for Foreign Affairs.

3. While in Albania, the Special Rapporteur met in Tirana with representatives of UNHCR, ICTY, OSCE, the Council of Europe and the International Committee of the Red Cross. Discussions were also held with local NGOs, which shared their findings based on interviews with refugees. The Special Rapporteur also visited the refugee camp in Mali I Robit, where she had the opportunity to interview refugees who gave accounts of human rights violations they had witnessed. Further testimonies were taken in Rrushbull camp in Durres. In Tirana the Special Rapporteur also met with the Attorney-General of Albania, Mr. Arben Rakipi.

4. The present interim report on the Special Rapporteur's mission to the region is prepared with the intention of providing a brief summary of her findings and impressions from the visit, and is largely based on information gathered by the Special Rapporteur or her staff during the mission. As the Special Rapporteur has had no access either to the people or the areas of the rest of the country, she has found it necessary to limit the scope of the present report to events in and allegations concerning Kosovo.

5. The Special Rapporteur continuously receives information gathered and analysed by field staff of the OHCHR Kosovo Emergency Operation, which is operating in the former Yugoslav Republic of Macedonia, Albania and Montenegro since early April 1999. Reports from the region indicate that summary killings are still being committed and that the situation may even deteriorate further in the near and mid-term future. There are also reports that civilian lives are wilfully and deliberately being put in danger by armed forces on the ground. While the primary focus of attention remains on the tragedy of the Kosovo Albanians forced out of their homes and country, there is an obvious need for more information regarding the situation of other ethnic groups in Kosovo. In order to capture all aspects of these atrocities as well as their scope and magnitude, the Special Rapporteur intends to present a more comprehensive, final report at a later stage when testimonies and information gathered on the ground have been analysed. There is also an urgent need for international monitors, including OHCHR staff, to regain access to Kosovo, so that on-site investigations and verification of alleged atrocities can begin. The Special Rapporteur further plans to conduct an additional mission to the area before submitting her final report to the Commission on Human Rights.

I. OBSERVATIONS

6. While it is clear that more work needs to be done before a full assessment of the situation can be presented, the Special Rapporteur nevertheless feels that some important observations can and need to be presented based on the information gathered so far. They can be summarized as follows.

7. Killings were mostly carried out by forces under direct or indirect State control. The majority of the testimonies narrated directly to the Special Rapporteur identify members of units of the Serbian police, the Yugoslav Army or paramilitary forces as responsible for these crimes. Many of the most atrocious killings reported appear to have been carried out by paramilitary units, operating either in cooperation with or with the direct or tacit approval of police or military forces present at or operating in the vicinity of the scene. It appears that government forces only exceptionally intervened to prevent or stop civilians from being killed Instances in which armed Serb civilians were identified as the perpetrators were also reported, but preliminary observations suggest that in most cases these persons were operating together with or were accompanied by government or paramilitary forces. Testimonies also indicate that the forces responsible for these crimes mostly acted under the direction of a clearly identified commander or leader.

8. The killings were not isolated in any specific area or areas in Kosovo, but occurred everywhere and in a systematic manner. While some of the most violent and massive atrocities appear to have been committed in areas traditionally suspected of harbouring members of the Kosovo Liberation Army (KLA), many locations, particularly in the eastern parts of Kosovo which had for a long time been largely unaffected by violence and destruction, had been affected indiscriminately.

9. Summary executions have taken place in varying circumstances and situations: targeted, indiscriminate, individual and mass killings have been

witnessed and recounted to the Special Rapporteur and her assisting staff. The accounts brought to the Special Rapporteur's notice include reports of direct targeting and killing of activists, lawyers, intellectuals or other well-known personalities. These killings were apparently carried out with the aim of spreading terror among the larger public and depriving the Kosovo Albanian community and political leadership of persons of high moral standing capable of forging alliances and leading society.

10. In this context, the Special Rapporteur wishes to take particular note of the tragic death of Professor Fehmi Agani, a respected intellectual and adviser to Dr. Ibrahim Rugova. Professor Agani was also a member of the Kosovo Albanian delegation at the talks in Rambouillet. Accounts of events immediately prior to the death of Professor Agani indicate that on 6 May he, together with the other passengers, was ordered off a train, which had been sent back to Pristina after the border to the former Yugoslav Republic of Macedonia had been closed at the Blace border-crossing. The police reportedly gathered a group of young men from among the passengers and threatened to execute them. In order to attract the attention of the police and in the hope of stopping the killing from taking place, Professor Agani reportedly stood up and removed the disguise he was wearing in order to avoid capture. After having identified Professor Agani the police did indeed leave the young men in peace. Professor Agani was then taken into a car with civilian licence plates. It appears that uniformed police officers in the car received orders via their radio, and then drove off with Professor Agani to an unknown destination. Despite repeated inquiries, Professor Agani's family was unable to locate him until the following day, when they heard on the radio that his dead body had been found in Lipljan. When Professor Agani's wife went to the hospital morgue in Pristina to identify her husband's body, the director of the morgue confirmed that Professor Agani's dead body had been brought there on 6 May, i.e. the same day he was abducted. While in the former Yugoslav Republic of Macedonia, the Special Rapporteur had the opportunity to meet with and extend her condolences to several members of Professor Agani's family.

11. The Special Rapporteur was also deeply disturbed and saddened to learn of the murder of Mr. Bajram Kelmendi, a prominent Kosovo Albanian human rights lawyer, and his two sons, Kastriot and Kushtim, in late March 1999. It is reported that on 25 March Mr. Kelmendi and his sons were taken from their home in Pristina by the police. The whereabouts of the three men remained unknown, until their dead bodies were found at a petrol station on the road between Pristina and Kosovo Polje the following day.

12. Refugees also described how groups of refugees, including women, children and elderly persons, were indiscriminately fired upon while trying to flee their homes and villages. While visiting a refugee camp in Albania, the Special Rapporteur had the opportunity to speak with a woman refugee from a village close to Suva Reka. According to her testimony, police, army and paramilitary forces entered the village on 25 March. When the villagers tried to flee, police and military reportedly opened fire, indiscriminately killing

seven persons. After the first shootings, the surviving villagers managed to make their way to a nearby stream, but were caught up by the same armed men who again opened fire on the crowd. Another four people were reportedly killed as a result.

13. Some of the most harrowing accounts describe individual, random or group killings in connection with forced expulsion. In some instances individual civilians would be randomly picked out from a crowd and killed on the spot, apparently with the aim of spreading fear among the civilians in order to expedite the process of expulsion. In the Cegrane camp in the former Yugoslav Republic of Macedonia, the Special Rapporteur received the following account from a woman from Glogovac. On 20 April four men dressed in paramilitary uniforms came to the woman's apartment, and ordered the whole family to gather in the living room and to sit down on the floor. The men then demanded that the family surrender all their valuables and foreign currency. While two of the armed men searched the apartment, one of the paramilitaries guarding the family suddenly shot the witness's brother, wounding him seriously. The other armed man then stepped up to the brother and shot him several times in the head. Having found nothing of value in the apartment, the four men left. Despite a heavy military and police presence and ongoing violence in the town, the women of the family managed to take the body of the dead brother to a nearby cemetery, where he was buried without ceremony.

14. In other instances entire extended families, including many women and children and sometimes numbering up to 20 persons, were reportedly wiped out in execution-style killings. Some testimonies describe whole villages being rounded up by police, army or paramilitary forces. In many cases the women and children would be separated from the men and then ordered to flee, while many of the men would be lined up and summarily executed. Other accounts indicate that in some instances police, military or paramilitary forces would order groups of refugees to run for their lives, and then open fire on the fleeing refugees. A man from a village close to Lipljan told the Special Rapporteur how his family, together with others, were surrounded by paramilitary forces in a valley while they were attempting to flee the area. When the displaced villagers tried to make their way out, the paramilitaries reportedly opened fire, killing several people. A group of paramilitaries then came up to the villagers and demanded that they surrender all their money and valuables. One of the villagers, a young man, managed to run away into the woods. Two others were immediately shot dead as a reprisal. The paramilitaries then separated the men from the women and children, who were told to leave. A car was parked in front of the remaining group of around 100 men and two machine guns were mounted on its roof. The men were told to run towards the surrounding forest, whereupon the paramilitaries reportedly opened fire with the two machine guns. The witness believes that he is one of the few survivors of the massacre.

15. Killings were in many instances carried out in an extremely cruel and degrading manner. The Special Rapporteur heard several testimonies, supported by other independent accounts, describing how victims were seriously ill-treated, humiliated and in some cases mutilated before being killed. Not

even dead bodies were spared this anger and hatred. There are also a number of accounts of corpses being burned, in apparent attempts to destroy evidence of atrocities. Accounts given to the Special Rapporteur and OHCHR staff also describe mass graves, including their location.

16. It is evident from the testimonies given by the victims and witnesses that the driving force behind their forcible expulsion was the urge to take revenge for NATO action, coupled with ethnic hatred which was openly expressed.

17. In this context of violence and cruelty, the Special Rapporteur wishes to note that regardless of the atrocities committed and the bleak and inhuman atmosphere described in numerous accounts and testimonies, there have been some remarkable acts of integrity, courage and compassion on the part of persons who at great personal risk have attempted to assist or rescue victims of human rights abuses. The Special Rapporteur is deeply impressed by the courage and integrity shown by persons such as Professor Agani, who were ready to expose themselves to great risks in order to save others. The Special Rapporteur also heard accounts describing instances in which groups of women refugees managed to save their male relatives or even strangers by helping them to hide in their convoy. Some of the refugees interviewed also told the Special Rapporteur how soldiers, usually young conscripts, and in some instances individual police officers tried to stop others from attacking or committing atrocities against the civilian population. In some instances it appears that police officers told particularly exposed persons to flee, as that was the only way of saving their lives. These acts of integrity give hope, even in the face of the worst forms of human behaviour.

II. RECOMMENDATIONS

18. The enormity of the situation is daunting, and any general recommendations may sound out of place and trivial at this stage of the conflict. It is obvious that the authorities of the Federal Republic of Yugoslavia and the Republic of Serbia must be called upon to put an immediate end to killings and violence in Kosovo. It is equally clear that international monitors, including OHCHR, and the media must be allowed to regain access to Kosovo for further investigations into alleged abuses and to expose the full reality of the situation to the international community.

19. There can be no impunity for crimes such as those reportedly committed in Kosovo. Investigation and prosecution of those directly responsible for such systematic and calculated killings need to be carried out both at the international and national levels. The Special Rapporteur, therefore, encourages the International Criminal Tribunal to continue its investigations with a view to bringing perpetrators of grave violations of human rights and humanitarian law to justice. All legal processes initiated in the prevailing atmosphere of outrage and hostility must also be seen to be totally independent and must scrupulously follow all relevant standards pertaining to due process of law.

20. A greater challenge is ahead for the international community in relation to the Kosovo crisis. Firstly, the vicious circle of reprisals must be brought to an end. Secondly, confidence between ethnic groups, which has been

so brutally abused, must be rebuilt. Thirdly, civil society must be rebuilt and the norms of responsible citizenry have to be instilled into a scarred and traumatized society. An even greater challenge is to ensure that violations of human rights of the scale witnessed in Kosovo are not repeated. Lessons learned from the Kosovo crisis deserve heightened debate, while some key issues remain unresolved and require mature consideration and resolution. Among the questions to be answered are the following:

(a) How and when should the international community respond to early warning signs of crisis?

(b) In the absence of any collective action by the international community in regard to unfolding human tragedies and atrocities, can any action be permitted to be taken unilaterally by another State or alliances of States? If so, how should such humanitarian intervention be legitimized, keeping in mind the appropriateness, proportionality and circumstances of the situation?

These are some of the matters and concerns the Special Rapporteur intends to explore and discuss further in her coming report.

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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1999/35

Addendum

Visit to Mexico

GE.99-16143 (E)

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Introduction

1. At the invitation of the Government of Mexico, the Special Rapporteur visited Mexico from 12 to 24 July 1999. The Government's invitation came in response to a long-standing request by the previous Special Rapporteur, Mr. Bacre Waly Ndiaye, which was reiterated by the present Special Rapporteur upon her appointment in 1998. The request was partly in response to repeated allegations of individual cases of extrajudicial killings, and reports of a number of massacres in past years in the States of Guerrero and Chiapas. Before travelling to Mexico the Special Rapporteur received a considerable amount of information from both governmental and non-governmental sources regarding the events in Acteal, El Bosque, Aguas Blancas and El Charco, and a series of murders of mostly young women in Ciudad Juárez, Chihuahua. Reports were also received from non-governmental organizations and private individuals from across Mexico of individual cases of alleged extrajudicial killings and of death threats against human rights defenders and members of civil society.

2. The Special Rapporteur wishes to take this opportunity to thank the Government of Mexico for inviting her to visit the country and for its valuable assistance and cooperation which greatly facilitated her work. Prior to the mission the Special Rapporteur and her supporting staff were in contact with the Permanent Mission of Mexico to the United Nations Office at Geneva, which played a central role in planning and facilitating the visit. During her stay in Mexico, all of the Special Rapporteur's requests for meetings were met. The Special Rapporteur and her delegation enjoyed full freedom of movement, and had free access to private individuals and non-governmental organizations. The Special Rapporteur also notes with appreciation that she was able to conduct her visit in an atmosphere of transparency and openness, largely owing to the national and international media which took an active interest in the mission. She also wishes to express her sincere appreciation for the assistance rendered by the numerous non-governmental organizations and private individuals she had the opportunity to meet while in Mexico. The United Nations Development Programme and the United Nations Information Centre in Mexico City provided invaluable logistical, administrative and other support, without which the visit would not have been productive.

3. This report is not and cannot be a substitute for official inquiries or judicial proceedings. Its scope is limited to the mandate entrusted to the Special Rapporteur and focuses on the current situation and on certain key events in the recent past, in particular the killings in Acteal, El Bosque, Aguas Blancas and El Charco. Investigations could not be carried out in all individual cases brought to the attention of the Special Rapporteur during her mission. Many of these will be processed and transmitted to the Government of Mexico, in accordance with the methods of work established under the special mechanisms of the Commission on Human Rights. Unravelling the complex background of today's human rights situation in Mexico will require a discussion which goes beyond both the scope and the purpose of the present report. The report, therefore, only includes broader observations relating to the overall human rights situation in the country to the extent that these are relevant to the mandate and may contribute to addressing the problem and preventing extrajudicial, summary or arbitrary executions in Mexico.

4. The conclusions and observations presented in the report are drawn on the basis of information gathered during the mission and in the light of relevant international standards. In this regard, the Special Rapporteur has given particular attention to the following issues:

(a) Measures taken by the Government to ensure the right to life;

(b) The proportionality and the propriety of the use of force by the law enforcement agencies, including the armed forces, in the performance of their duties;

(c) The reliability of the investigations carried out by the authorities into the incidents under scrutiny;

(d) Actions taken to bring to justice the perpetrators of killings, regardless of their public or official position;

(e) Measures taken by the authorities to prevent the recurrence of such tragedies;

(f) The Government's complicity or acquiescence in killings carried out by non-State actors.

I. PROGRAMME OF THE VISIT

5. In the early part of her mission, the Special Rapporteur held meetings with the following officials and State institutions in Mexico City: the Minister for Foreign Affairs, the Minister of the Interior, the federal Attorney-General, the Military Attorney-General, the National Human Rights Commission, the National Indigenous Institute and the Coordinator for Dialogue and Negotiations in Chiapas. Meetings were also held with the Standing Human Rights Committee of the Mexican Congress and with representatives of political parties. Towards the end of her visit the Special Rapporteur met with the Mayor and other officials of the Federal District and held follow-up meetings in the capital with the federal Attorney-General and with the Inter-secretarial Commission for Human Rights. In Mexico City she also met with the President of the Human Rights Commission of the Federal District. At the end of the mission a press conference was held in Mexico City.

6. While in Mexico City the Special Rapporteur held discussions with representatives of non-governmental organizations and with witnesses or relatives and family members of victims of alleged extrajudicial killings. Other sources of information included the following organizations: Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos", Acción de los Cristianos por la Abolición de al Tortura, Ciudadanos en Apoyo a los Derechos Humanos, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Centro de Derechos Humanos Fray Fransico de Vitoria, Comisión Mexicana de Defensa y Promoción de Derechos Humanos, Centro de Estudios Fronterizos y de Promoción de los Derechos Humanos, Comisión de Solidaridad y Defensa de Derechos Humanos, Comunicación e Información de la Mujer, Asociación de Familiares de Desaparecidos-Detenidos en Mexico, Frente Civico Sinaloense, Centro Nacional de Comunicación Social, Centro de Apoyo al Migrante, California Rural Legal Assistance. The Special Rapporteur also received information about the situation of journalists in Mexico from representatives of Red Nacional de Comunicadores Civiles/Censos

and Red de Protección a Periodistas y Medios de Comunicación. In Mexico City she also held discussions with some women's organizations, particularly in regard to the events in Ciudad Juárez.

7. The Special Rapporteur travelled to the State of Guerrero from 16 to 19 July. In the state capital, Chilpancingo, she met with the local authorities, including the Governor and the State Prosecutor. Also in Chilpancingo she had meetings with the Human Rights Commission of Guerrero and representatives of the National Indigenous Institute, and with non-governmental human rights organizations such as Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos", Centro de Derechos Humanos de la Montaña "Tlachinollan" and the Southern Sierra Peasant Organization. In Chilpancingo she also had the opportunity to listen to a large number of testimonies from witnesses to alleged extrajudicial, summary or arbitrary executions. In Guerrero, the Special Rapporteur visited the Social Readaptation Centre (Centro de Readaptación Social) in Acapulco where she interviewed inmates, including former police officers serving sentences for their role in the Aguas Blancas incident and civilians incarcerated in connection with the army operation in El Charco.

8. The Special Rapporteur visited the State of Chiapas on 20 to 22 July. In the state capital, Tuxtla Gutiérrez, she held meetings with the State Governor, Secretary of the Interior, Attorney-General and Human Rights Commission. In San Cristóbal de las Casas, she met with the Mayor, representatives of the City Assembly, the Mayor of Chenalhó and the Special Prosecutor in the case of Acteal. She was also extensively briefed by non-governmental organizations including Centro de Derechos Humanos Fray Bartolomé de las Casas, Centro de Derechos Humanos Fray Pedro Lorenzo de la Nada, Centro de Derechos Humanos Fray Matías de Córdoba, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos and the Confraternice society. In San Cristóbal de las Casas she heard testimonies from private individuals who claimed to have witnessed human rights violations, including extrajudicial killings. A brief meeting was held with Bishop Samuel Ruiz who headed the Comisión Nacional de Intermediación (CONAI). While in Chiapas, she had the opportunity to visit the village of Acteal, municipality of Chenalhó, where she heard testimonies of survivors of the December 1997 massacre. In San Cristóbal de las Casas she also held discussions with the International Committee of the Red Cross.

9. At the end of her visit on 23 July, the Special Rapporteur travelled to Ciudad Juárez in the State of Chihuahua, where she met with officials of the Public Prosecutor's Office, including the Special Prosecutor in the murder cases of Ciudad Juárez. The purpose of the visit was to gather information regarding a series of killings of young women in the last six years in that area. In Ciudad Juárez, she also had the opportunity to meet representatives of trade unions and members of the local business community.

II. GENERAL OBSERVATIONS

10. The Special Rapporteur recognizes the difficulties faced by the Government of Mexico in providing sound governance. The federation consists of 31 states and one federal district. Mexico has a richly diverse culture, with an indigenous population of more than 8 million, most of them concentrated in the southern States of Chiapas, Oaxaca, Veracruz and Yucatan. More than 59 languages are spoken in the country. Considerable economic and social differences exist

between the largely underdeveloped southern states on the one hand, and the industrialized urban centres and the developing areas along the border with the United States of America on the other. This uneven distribution of wealth and opportunities has in recent years led to rapid urbanization. It is estimated that 60 to 70 per cent of the entire population now live in urban areas. The emergence of armed groups pose yet another challenge. All these factors contribute towards the complexity of the situation, but cannot reduce the responsibility of the Government for protecting the lives of the country's citizens. It will be recalled that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions emphasize the absolute respect for life even during "a state of war or threat of war, internal political instability or any other public emergency".

11. Mexico has had a troubled record of violence and human rights violations, including extrajudicial killings, in the recent past. This legacy largely shapes today's human rights debate and determines the challenges the country is now facing. The country is going through a complicated process of economic and political transition. At the same time it is working hard to reaffirm its position internationally, especially in the sphere of economic integration and cooperation. In recent decades successive Governments have initiated a wide range of political and judicial reforms. Some of these have directly aimed at addressing urgent human rights concerns, including violations of the right to life. Despite the effort and the commitment, the human rights situation has remained a cause for national and international concern. According to some observers, in the past these initiatives were undertaken in response to particularly serious and widely publicized incidents, and were sometimes aimed more at protecting the country's international image than at genuinely addressing the causes of the problems.

12. In their discussions with the Special Rapporteur, government officials, private individuals and members of non-governmental organizations generally agreed that there had been a gradual change in the attitude of some of the government actors, from the federal to the municipal level, who were now more inclined towards improving the overall human rights performance of public institutions and agencies. In this context, the Special Rapporteur takes particular note of the public statements of President Ernesto Zedillo Ponce de León acknowledging that human rights problems exist, and reaffirming his determination to do away totally with the phenomenon of impunity and to reform the legal system in order to leave no room for extrajudicial killings.

13. This determination and commitment was echoed by every government official and holder of public office the Special Rapporteur spoke to. However, while some officials and institutions had indeed initiated changes, others were still content with rhetoric, blaming lack of progress on the legacy of the political culture of the past. Despite this mixed level of commitment on the part of State officials, most interlocutors, including members of opposition parties and NGOs, journalists and victims of past excesses or their families, acknowledged that the incidence of large-scale extrajudicial killings had decreased in the last couple of years, and that the democratic process was inching along in a positive direction. The Special Rapporteur was encouraged by the active participation of civil society in bringing human rights issues to public attention. The most inspiring aspect of Mexican civil society is the emergence of an informed public and a public determination to press for greater respect for human rights.

14. Examples of concrete efforts aimed at doing away with the legacy and practices of the past, were noticeable at all levels of Government, despite some reluctance. The Special

Rapporteur was particularly encouraged to learn that the new government in the State of Guerrero had decided to abandon the long-standing practice of the government appointing the Attorney-General of the State, instead referring that decision to the Congress. In discussions with the Special Rapporteur, the Governor of Guerrero recognized that impunity still existed for persons with political or social status, but he stressed his determination to overcome the problem by strengthening the institutions of the administration of justice and raising public human rights awareness. The Special Rapporteur also had a very constructive meeting with the Attorney-General of Guerrero, at which the Special Rapporteur was given responses to several cases raised in her last report to the Commission on Human Rights (E/CN.4/1999/39/Add.1). The Attorney-General's Office was also able to produce before the Special Rapporteur three persons reported as missing in the above-mentioned report.

15. The federal Government has in recent years taken a series of initiatives, which the Government points out are aimed at strengthening the legal system and the process of democratization. Amongst these are:

(a) The institution of wide-ranging electoral reforms;

(b) The expansion of the jurisdiction of the ordinary courts to hear election petitions;

(c) The introduction of elections for the Mayor of Mexico City;

(d) The introduction of legislation to improve the performance and accountability of the Office of the Attorney-General;

(e) The introduction of judicial reforms to improve the administration of the federal courts;

(f) The improvement of the working conditions of prosecutors and judges, including the introduction of modern technology and an increase in the number of courts;

(g) The reform of the criminal justice system in order to control organized crime;

(h) The granting of jurisdiction to the Supreme Court for judicial review in certain areas;

(i) The strengthening in 1998 of the Federal Law to Prevent and Punish Torture;

(j) The setting up of the federal Comisión Nacional de Derechos Humanos (CNDH) and similar commissions at the state level;

(k) Giving human rights training to members of the armed forces, the police and officials of the Offices of some state Attorneys-General; and

(l) Taking initiatives towards reconciliation with armed opposition groups.

The Special Rapporteur welcomes these initiatives and looks forward to their practical effects in avoiding further extrajudicial executions and bringing to justice and punishing those responsible.

16. The Special Rapporteur welcomes the continued process of reform. At the same time, she is informed that the situation remains unsatisfactory in many areas, especially with regard to strengthening institutions at the state and local levels. The initial steps taken and commitments made by the Mexican authorities to address the country's human rights problems illustrate that political will on the part of Governments is a prerequisite for genuine change. However, some members of opposition parties and NGOs were reluctant to accept the Government's stated commitment to speedy and genuine reform at face value. They feared that henceforth extrajudicial killings and other serious human rights violations would be carried out with greater care so as not to expose the direct or indirect involvement of the police or the military.

17. Many interlocutors were fearful that heightened political tensions and frustrations in the run-up to the elections in the year 2000, combined with the presence of armed groups of various political leanings, could lead to unrest and violence in the coming months. During the past election period tensions erupted in violence and there were allegations of extrajudicial killings having occurred. Members of the opposition representing the PRD (Partido de la Revolucion Democratica) and others hoped for an international presence during the presidential and parliamentary elections in 2000 to deter expected violence. In Mexico the preparations for the elections were well under way and the Special Rapporteur was pleased to note that human rights concerns, particularly the question of impunity for human rights offenders and other important sources of injustice, had become central themes of public debate. The Special Rapporteur believes that initiatives aimed at defusing tensions and preventing violence in the pre-election period could contribute to rebuilding trust between the groups that are now politically deadlocked or engaged in armed confrontation.

III. THE RIGHT TO LIFE: FINDINGS AND CONCERNS

A. General background

18. Most of the information presented to the Special Rapporteur during her mission focused on the incidents in Acteal and El Bosque in the State of Chiapas and in Aguas Blancas and El Charco in the State of Guerrero. These were all directly or indirectly related to mounting political tensions and the emergence of armed opposition groups in the two states. While these movements are militant in pursuing their agendas, which are rooted in economic, social and political grievances, their demands do not include secession. They are rather concerned with greater local autonomy and economic empowerment of the indigenous population.

19. In the State of Chiapas, on 1 January 1994, the long-standing political tensions reached a crisis when the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN), mounted a brief armed uprising against the federal Government in protest against alleged repression by the army and police and to voice demands for greater autonomy, economic empowerment and respect for the indigenous communities. After 12 days a ceasefire was declared. Negotiations between the Government and the EZLN eventually led to the signing of the San Andrés Larráinzar accords on 16 February 1996, which established a framework for increased municipal autonomy and protection of the local indigenous communities. However,

these accords were not implemented although they are still formally in force. The Special Rapporteur was told that the Government feared that implementation of the accords would deprive disadvantaged groups within the indigenous communities of their individual rights, in favour of the collective rights of the indigenous population. The government forces and the EZLN are now maintaining a tense stand-off with occasional violent encounters. Since 1996, the EZLN and its sympathizers have declared 38 "autonomous municipalities" in Chiapas. The Government has not recognized these communities, and four of them have so far been dissolved by the federal authorities. The confrontation between the EZLN and the Government has divided the local population and given rise to armed groups, which are often referred to as "paramilitary groups".

20. The tragic events in Acteal occurred against a background of long-standing disputes, often over land ownership, which have for decades divided the local indigenous communities. These divisions have been further exacerbated by religious and political tensions in Chiapas, stemming from the confrontation between the Government and opposition groups, particularly EZLN. Clashes between supporters of the governing Institutional Revolutionary Party (Partido Revolucionario Institutional, PRI) and EZLN sympathizers have claimed a large number of victims during the last five years. This political confrontation has effectively pitted local communities against each other, and as a consequence the indigenous population has paid a heavy price in terms of human suffering and remains under the constant threat of renewed violence.

21. In Guerrero, organized peasant groups have from time to time been in confrontation with the Government. The authorities maintain that some of these groups are armed and militant while others have links to these militant and armed groups. The Southern Sierra Peasant Organization (Organización Campesina de la Sierra del Sur, OCSS) was founded in January 1994 by a group of local farmers in the town of Tepetixtla, in order to protect the interests of the rural population which at that time was under particular threat owing to continuously decreasing prices of agricultural products. It represents several thousand peasants in the Costa Grande region of Guerrero. Among the key demands of the organization is that the Government provide assistance in improving the infrastructure, such as roads and water supply, and that the police and army put an end to the violence and intimidation allegedly directed against the rural population. The authorities have accused OCSS of maintaining close links with the armed opposition group, the Popular Revolutionary Army (Ejército Popular Revolucionario, EPR), an organization which made its first public appearance in 1996, a year after the massacre in Aguas Blancas. Government forces continue to be engaged in sporadic low-level conflicts with EPR and its splinter group, ERPI (Ejército Revolucionario del Pueblo Insurgente). The Government regards these groups as terrorist movements and is not ready to initiate negotiations in order to defuse the situation. The emergence of EPR/ERPI and the Government's counter-insurgency operations have led to increased militarization and violence in the region, which in turn has had serious human rights implications for the civilian population.

22. In addition to incidents related to the armed confrontation in Chiapas and Guerrero, the Special Rapporteur was also alerted to a number of other cases mostly relating to abuse by the police and excessive or arbitrary use of force by the military. Some of the reports received point towards an entrenched culture of violence among some elements of the law enforcement authorities, who continue to perpetrate grave human rights violations with impunity. The

anti-crime operations undertaken by the Mexican police and military have reportedly at times involved excessive or indiscriminate use of force, and have on occasion claimed the lives of innocent civilians. In discussions with the Special Rapporteur, the Mexican authorities explained in great detail their plans and initiatives to counter the rising crime rate, which is often closely linked to the use of and trafficking in narcotics. While the Special Rapporteur fully appreciates the need to curb criminality and the challenges the Government is facing in that regard, she is concerned that some of the measures, especially the assignment of army personnel to law enforcement duties, may work to the detriment of the overall rule of law and the enjoyment of human rights in Mexico.

23. Although specific in terms of their context and geographic location, the incidents and cases discussed in the following paragraphs illustrate deeply rooted problems regarding impunity for human rights offenders, the overall ineffectiveness of the justice system and a lack of transparency in the work of state institutions which affect the country and its population as a whole. These are key issues which the Mexican authorities will have to address as a matter of urgency if they are to give credence and validity to their stated commitment to break the vicious circle of violence and impunity which has marred the country's human rights record for so long.

B. Acteal, Chiapas, 22 December 1997

24. Reports indicate that the attack on Acteal was preceded by threats against the village, which was known to have a number of EZLN sympathizers among its residents. It should be noted that in the weeks preceding the massacre, members of the PRI-led municipal council of Chenalhó, EZLN sympathizers representing the "Polhó Autonomous Municipal Council" and "Las Abejas" ("the Bees") a society established and registered as a non-profit organization in 1992, were engaged in talks aimed at resolving the mounting political and inter-community problems in the region. These negotiations, the so-called Las Limas talks, came to an abrupt end on 17 December 1997, when an indigenous PRI member, Agustín Vázquez Secum, was killed in an ambush in the village of Quextic by an armed group believed to be EZLN sympathizers. This incident was the culmination of a series of clashes between local EZLN elements and government supporters in the months preceding the massacre in Acteal. By mid-December 1997, some 25 people had reportedly lost their lives as a result of this violence.

25. On 22 December 1997, a group of some 60-80 armed men attacked the village of Acteal. The first shots were reportedly heard at around 11.00 a.m., when most of the villagers were gathered in the village church to pray for help and protection against the attack they were expecting. Reports received and eye-witness testimonies heard personally by the Special Rapporteur indicate that many of the victims were shot dead as they were running away from the attackers. Others were shot at close range while lying down, trying to take shelter in a ditch. The shooting reportedly went on till around 6.00-7.00 p.m., when the attackers withdrew from the village. Forty-five unarmed civilians, mostly women and children, lost their lives, and 25 others were wounded in this massacre. All of the victims belonged to the "Las Abejas" society.

26. On 21 July, the Special Rapporteur visited Acteal, where she had the opportunity to inspect the scene of the massacre, meet representatives of the "Las Abejas" society and listen to

testimonies of survivors and witnesses. She wishes to thank the residents of Acteal for their cooperation and for giving her the chance to acquaint herself with the village and its surroundings.

27. It would appear that the state authorities, including the police, although doubtless aware of the mounting tension and the grievances in the Chenalhó region, took no concrete measures to pre-empt further violence. Reports by non-governmental sources allege that government officials, including the Secretary of the Interior of Chiapas, having been informed that the incident was taking place, failed to take action. At the time of the massacre the closest police patrol was reportedly stationed only 200 metres from the scene but did not intervene. It is also reported that the local police seriously tampered with the scene of the massacre, and allegedly even tried to remove some of the corpses before proper investigations had begun.

28. Based on its investigation into the incident at Acteal, on 8 January 1998, CNDH issued recommendation 01/98 addressed to the Governor of the State of Chiapas and the federal Attorney-General, in which it pointed to a series of omissions and irregularities on the part of the state authorities which it considered amounted to human rights violations. CNDH reported that the Secretary of the Interior of the State of Chiapas and the Executive Secretary of the National Mediation Commission in the diocese of San Cristobal de las Casas were informed around 11.00 a.m. that there was shooting in Acteal. According to the White Paper published by the federal Attorney-General's Office (Procuraduria General de la República, PGR), public security officers went to the scene between 6.00 and 7.00 p.m. and reported that gunfire could still be heard. The Commission recommended, inter alia, that further investigations be undertaken in order to ascertain the responsibility of 15 identified public officials in relation to the irregularities cited, including high-level civil servants such as the state Attorney-General, the Secretary of the Interior and a number of senior police officials. It was suggested that a number of officers named should resign. CNDH also recommended that the procedures employed by the state Prosecutor's Office be reviewed and that the training given to officials of that office and the state police be revised and strengthened. CNDH further recommended that the state government pay indemnities to the families of the dead and the injured. It may be noted that on the day of the publication of CNDH's recommendations, the Governor of Chiapas and all officials implicated by CNDH in the case of Acteal resigned from their positions.

29. The massacre in Acteal was widely publicized in the press and the President of Mexico, promptly, on 23 December, requested PGR to consider transferring jurisdiction over the Acteal case to the federal level. PGR agreed to the transfer, as it considered that the incident involved crimes falling both under local and federal jurisdiction. The same day PGR dispatched an Assistant Attorney-General, along with a group of investigators and federal judicial police officer, to Chiapas to begin inquiries into the incident.

30. On 1 April 1998, PGR established the Office of the Special Prosecutor to investigate the crimes committed in Chenalhó municipality, State of Chiapas. In San Cristóbal de las Casas, the Special Rapporteur met with the Special Prosecutor, who briefed her extensively about the status of the investigations. In December 1998, the Office of the Special Prosecutor published the White Paper on Acteal, presenting the official findings and describing the steps taken by the authorities to investigate the case. In the document PGR explained the Acteal massacre as the culmination of long-standing and unresolved conflicts between local indigenous communities,

and concluded that the authorities had contributed to the increasing tensions and insecurity by failing to take appropriate action to investigate a series of crimes committed in the region before the incident on 22 December 1997. After the Acteal massacre, PGR took over jurisdiction for 34 cases of crimes committed in the region before 22 December 1997 involving, inter alia, homicide, assault and illegal possession of arms. PGR found that in several of these cases, mostly involving EZLN and pro-Government elements, there had been serious delays in the proceedings which could be deemed as hindering the administration of justice. Legal proceedings have since been initiated against a number of public officials considered responsible for these omissions.

31. In addition to obvious acts of omission or negligence, investigations showed that members of the state police had been involved in providing weapons and transportation to the perpetrators of the massacre. PGR also found that the police officers stationed in the area had failed to take adequate measures to protect the lives of the Acteal residents. Fourteen police officers were arrested on suspicion of involvement in such activities. The first group of 20 civilians suspected of being the perpetrators of the massacre were apprehended by the police after having been identified by witnesses to the massacre. Based on information obtained from these persons, the police then identified and subsequently arrested the remaining suspects.

32. On 20 July, the Special Rapporteur visited the Cero Hueco prison in Tuxtla Gutiérrez, where the majority of the persons arrested for the incident were being held. The Special Rapporteur regrets the unfortunate timing of the visit, which came only one day after some of the accused had received their sentences, which ranged from 3 years and 9 months to 35 years of imprisonment. None of those found guilty was among the high-ranking state officials named by CNDH in its recommendations on the case. According to statistics provided by the Cero Hueco prison, a total of 101 persons are currently in detention in connection with the Acteal massacre. Of these persons, 67 civilians and 8 former police officers are still under investigation or awaiting their verdicts. Among the detained is also the former Mayor of Chenalhó, Jacinto Arias Cruz, who was sentenced to 35 years of imprisonment in September 1999 for having distributed arms to the offenders. The Special Rapporteur did not meet Mayor Cruz, despite a request to see all those imprisoned in connection with the Acteal massacre.

33. Many of the persons with whom the Special Rapporteur spoke, including the convicted former police officers, expressed bitterness over the fact that the superior officers and higher public officials whom they felt held ultimate responsibility for the acts and omissions by the authorities on the day of the massacre, and who were identified in the recommendations of CNDH referred to above, had not been brought to justice. A number of questions were also raised regarding the arrests carried out following the massacre, and many expressed doubts as to whether all the civilians held were actually responsible for the massacre. It was alleged that many of the arrested were picked up at random by the police and detained. In some instances these persons were apparently asked by the police to come to Tuxtla Gutiérrez for unspecified "talks", and were arrested upon arrival. The Special Prosecutor for the case of Acteal explained that this method was resorted to as there was no other way of finding the suspects for identification by the survivors of the massacre.

34. Concerns were expressed that some of the arrested might simply have been pointed out as an act of revenge or reprisal by hostile neighbours or political opponents. In this regard it should

be noted that PGR informed the Special Rapporteur that the authorities had sought assistance from Mayor Cruz of Chenalhó to verify the identity of the suspects after they had already been arrested and positively identified. The Mayor himself was charged on 27 December 1997. The survivors confirmed that those convicted were genuinely responsible. Some non-governmental organizations involved in the case were equally convinced. They did maintain that the Mexican legal system had serious flaws, but seemed reluctant to question whether all of the persons arrested and convicted for the massacre in Acteal were indeed responsible for the crimes. In discussions with the Special Rapporteur, the present Mayor of Chenalhó expressed doubts in this regard and strongly felt that the entire case needed to be reinvestigated. He was deeply concerned that wrong convictions could trigger another wave of violence through reprisals, especially as the convicts and the victims belong to two feuding religious factions.

35. There was widespread concern that the convictions would not end the violence as the root causes had not been addressed. First, the role and responsibility of higher public state officials in not having taken appropriate action in regard to the incident had not been adequately investigated, as expressly recommended by CNDH in its recommendation 1/98 of 8 January 1998. Secondly, armed paramilitary groups continue to operate freely and threaten the lives of the indigenous people. Finally, adequate steps have yet to be taken to inspire confidence in the judicial system. During the mission, the Special Rapporteur had the opportunity to discuss the legal provisions regarding bail with the Chief Justice of the High Court of Chiapas. He said that the judiciary had complete confidence in the judgement of the prosecutor in framing the charges against those who were guilty, and thus provisions for bail were of no relevance.

36. While the Special Rapporteur recognizes the pressure under which PGR was working in terms of delays in the investigations and the constant demands for convictions, she is compelled to note that the procedures for arrest and investigation were highly irregular and left an unacceptable margin for mistaken identification. The information furnished by the authorities, NGOs and private individuals does not convince the Special Rapporteur that justice has been fully served in the investigations and trials following the incident in Acteal. The official records did establish the involvement of state police agents in assisting the perpetrators in obtaining firearms and in clandestinely transporting the weapons. However, the investigation did not satisfactorily address the flagrant failure of the entire police command structure to intervene to prevent the massacre on the day of the incident and to address the rapidly deteriorating security situation in the region in the months preceding.

37. The Special Rapporteur is concerned that the shortcomings and irregularities referred to above left room for wrongful convictions and selective impunity, especially when it comes to identifying the real perpetrators of the crime and establishing the responsibility of persons in positions of authority and command. The serious doubts that persist among the local population as regards the independence and transparency of the official inquiries into the case also contribute to the overall distrust of the state authorities on the part of the local population. This in turn may lead to more tensions, frustrations, and even ultimately reprisals in misconceived attempts to achieve justice where the official system set in place for that purpose is seen to have failed.

C. El Bosque, Chiapas, 10 June 1998

38. The killing of eight civilians and two police officers in the municipality of El Bosque in the State of Chiapas occurred in connection with an operation carried out by the security forces on 10 June 1998 to arrest a number of persons belonging to the communities of Nischtatalucum, Alvaro Obregon, Tierra Tzotzil, Chavajeval and Unión Progreso. The security forces had arrest and search warrants issued by the Jurisdictional Organ for State Law as part of criminal cases numbers 13/998, 50/998 and 59/998.

39. According to the Government, the operation was supported by army units with "protective functions" as the government forces feared armed resistance from the local community in executing the arrest warrants. On their way to Unión Progreso and Chavajeval the government forces were attacked, as a consequence of which the two police officers and eight civilians were killed. Fifty-three alleged members of EZLN were arrested. Of these 27 were handed over to the appropriate legal body, five were placed in the custody of the guardian council for juvenile delinquents and the rest were released.

40. Reports from NGOs suggest that the operation was part of a larger campaign by the authorities aimed at dismantling the so-called "autonomous municipalities" that had been set up in the region by EZLN members and supporters, and that the arrest warrants were only a pretext for the action in El Bosque. According to the same sources, the El Bosque action was the fourth in a series of similar operations carried out in the first half of 1998, earlier in the year, government forces had reportedly moved against the communities of Taniperla, Amparo Ocosingo and Nicolás Ruiz. Non-governmental sources claimed that 11 EZLN fighters were killed and at least 15 wounded in the clash. It was further alleged that elderly men and women were arrested and mistreated by the police in connection with the incident. Houses were also reportedly ransacked and the water supply to the communities concerned was cut off. A few days later, eight bodies were returned to Unión Progreso. Witnesses' testimonies suggested that six of the deceased had been detained and killed while in custody. Other witnesses recounted that helicopters were used in the operation. Two of the persons arrested had not been present at the scene, which was later confirmed by CNDH.

41. On 14 October 1998, CNDH issued its report (74/98) on the events in El Bosque, Chavajeval and Unión Progreso. In the document CNDH referred to procedural irregularities in the official investigation into the El Bosque incident. The Commission concluded that five persons had been arrested without a warrant, that they were not caught in flagrante delicto and that there had been no particular urgency in apprehending them. It also concluded that the acts committed by the law enforcement agents had violated human rights and infringed Mexican laws and international instruments to the detriment of the injured parties. It did not, however, recommend prosecution of the police officers or members of the armed forces directly responsible for the killings.

42. On 12 June 1998, the United Nations High Commissioner for Human Rights made a statement expressing her mounting concern over the situation of human rights in Chiapas. She appealed to the Government urgently to look at ways of restoring dialogue with communities in

Chiapas. The High Commissioner also noted that a reduction in the military presence in the region could be an important first step in restoring confidence so that a peaceful solution might be found.

43. The Special Rapporteur was informed by all sources that none of the persons against whom the arrest warrants were issued had previously been imprisoned or convicted for any crime. It would therefore appear that the need to apprehend these persons urgently was overrated and that the scale of the operation was not justified. This lends credence to reports from non-governmental sources suggesting that in mounting the operation the Government had ulterior motives relating to its alleged campaign to dismantle the "autonomous municipalities" in Chiapas. The request for army assistance, including helicopters, seems to indicate that the authorities, in planning the operation, did expect stiff resistance. However, it would appear that in carrying out the action the police and army used excessive force and serious allegations of extrajudicial killings in the aftermath of the operation were not investigated.

44. Violations of human rights committed by members of the armed forces are investigated and tried by military courts, and the procedure followed is regulated by the Military Justice Code. Members of all military courts are serving officers appointed by the executive. Independent complainants may not initiate criminal proceedings against a member of the armed forces, as only the Ministry of Defence has the authority to prosecute members of the armed forces before a military court. These courts do not conform to the Basic Principles on the Independence of the Judiciary. The military justice system is arbitrary, resulting in miscarriage of justice. In the case of El Bosque, no prosecution was considered by the Ministry of Defence. The Military Attorney-General provided the Special Rapporteur with information regarding the prosecution of members of the armed forces. This material does not disclose the total number of accused persons or the provisions under which they were charged. According to the information received, 77 people are on trial for drug-related offences, 40 for homicide, 27 for manslaughter, 46 for violence against people, 68 for abuse of force, 20 for deliberate infliction of injury, 15 for unintentional infliction of injury, and 31 for torture. A note at the end of the document states that some of the accused are included in more than one category.

D. Aguas Blancas, Guerrero, 28 June 1995

45. At around 10.30 a.m. on 28 June 1995, two vehicles carrying local peasants, mostly members of the Southern Sierra Peasant Organization (OCSS), were stopped at a roadblock set up by the state motorized police at a bend in the road near Aguas Blancas in the State of Guerrero. The two cars were on their way to Atoyac de Alvarez, where OCSS was planning to hold a political demonstration protesting the "disappearance" of one of its members. In addition to OCSS members, the two vehicles, both large trucks, were carrying local peasants on their way to the town market. The first vehicle was stopped by the police, and the passengers were told to get out and lie down on the ground. The second vehicle, carrying some 40 persons, arrived about 10 minutes later. As it stopped shots were heard and the police immediately opened fire against the vehicle, including with automatic rifles. Seventeen civilians were killed and more than 20 wounded. Two police officers suffered minor injuries, none of them caused by firearms.

46. Immediately after the incident the Government claimed that there had been an exchange of fire, provoked by the peasants who had fired the first shots. According to government

information, the roadblock was part of a routine operation to check passing vehicles for arms. Shortly after the massacre, the Governor of Guerrero, Rubén Figueroa Alcocer, released to the media a copy of a videotape about the incident, apparently with the intention of clarifying the events. The tape showed, inter alia, the bodies of those killed with weapons in their hands. The value and authenticity of the tape were later called into question, as it reportedly had been heavily edited before being released.

47. According to witnesses' testimonies, after the shooting had stopped, the police told the survivors to get out of the truck and return to their homes. While they were walking away they reportedly heard isolated shots being fired. One of the farmers who remained at the scene allegedly witnessed the police shooting one of the injured farmers in the head. Forensic reports, quoted by CNDH in its report on the incident, indicate that three of the victims had been shot through the head from a distance of less than one metre. Sources also alleged that the police, after having sealed off the scene, planted guns in the hands of the persons killed in the assault so that the incident would appear to be an armed confrontation.

48. The investigation into the Aguas Blancas massacre was conducted by the state Attorney-General's Office, as the federal Attorney-General was of the opinion that the crime did not fall within federal jurisdiction and could not, therefore, be investigated by him. On 4 July 1995, the First Instance Court of Tabares issued arrest warrants for 10 former police officers accused of homicide and abuse of authority in relation to the Aguas Blancas incident.

49. Immediately following the massacre, representatives of the PRD (Partido de la Revolución Democrática) opposition party and human rights NGOs called upon CNDH to investigate the case. In August 1995, CNDH issued a report (104/95) in which it identified a series of irregularities in the investigations into the case by the state authorities of Guerrero. According to CNDH's findings, the authorities had failed to interview witnesses to the massacre and had not conducted proper interrogations of the police officers involved in the operation. CNDH further found that the forensic reports of the case were incomplete, faulty and riddled with errors. The numbering of the bodies of the victims had also apparently been changed by the investigating police. The Commission pointed out that the state Attorney-General's Office had failed to deliver important photographs taken at the crime scene to CNDH. Finally, CNDH found that the police officers interviewed by its investigators had been coached to give a description of the events that was deliberately misleading. In its report CNDH recommended that 21 police officers and public officials be investigated for their role in the Aguas Blancas incident and that eight of these persons be relieved of their functions. CNDH also recommended that a special prosecutor be appointed. At that time CNDH had not been privy to the unedited version of the videotape of the incident (see below) and therefore did not stress the need for an investigation of higher state officials.

50. Following the recommendation of CNDH, on 29 August 1995, the state Attorney-General's Office appointed a special prosecutor to lead the investigation into the incident at Aguas Blancas. As a result of the investigation a total of 28 former police officers and 12 former state officials were arrested. On 11 July 1997, they were sentenced to prison terms ranging from 26 years and 6 months to 8 months. Their prison terms were later reduced, and all but 15 of the police officers were subsequently released after their writs of amparo had

been granted. Currently, 13 former police officers are serving their sentences at the Centre for Social Readaptation at Acapulco, while two are being held at the prison in Chilpancingo.

51. While it is acknowledged that a number of police officers who participated in the operation in Aguas Blancas have been prosecuted for their crimes, human rights lawyers and NGOs, as well as a number of opposition politicians, contend that the State has been unwilling to establish the responsibility of higher state officials, including the Governor of the State. This sentiment was also shared by the convicted former police officers with whom the Special Rapporteur spoke in the prison in Acapulco. In February 1996, the special prosecutor presented a report to the Permanent Commission of the Guerrero State Congress, in which he concluded that his office had found no evidence establishing criminal responsibility for the Aguas Blancas case in relation to several named high state officials, including the Governor. He further stated that his office fully shared the opinion of CNDH that the Governor and the Secretary-General of the Government of Guerrero had not been involved in the massacre, and therefore no criminal proceedings against these persons would be initiated. On 28 February CNDH publicly denied that it had recommended the exoneration of the two officials.

52. Previously, on 25 February 1996, what was said to be the unedited version of the videotape of the massacre was shown on national television. The film showed that the farmers in the truck had not resisted the police, that they had no weapons, and gave the overall impression that the police acted in a calculated and organized manner and not, as had been claimed, in desperation after having been attacked. While in Mexico the Special Rapporteur had the opportunity to view, in addition to the videotape, a documentary on the question of impunity in the Aguas Blancas case. She learnt that the documentary had not been broadcast on television owing to the sensitive issue of impunity for senior public officials.

53. Following the public outcry caused by the television broadcast, on 4 March 1996, the President of Mexico asked the Supreme Court to inquire into the case of Aguas Blancas under article 97 of the Political Constitution of the United Mexican States (it will be recalled that in the initial stages of the investigation the Supreme Court had decided not to assume jurisdiction over the matter); the Supreme Court had not assumed jurisdiction under article 97 for more than 50 years. According to article 97 the role of the Court in such inquiries is merely declaratory and its findings are not binding. The Supreme Court concluded that there had been grave violations of human rights in connection with the Aguas Blancas incident and attributed responsibility to the Governor of Guerrero and seven other senior officials. Copies of the findings were sent to the President of the Republic, the Congress of Mexico, the federal Attorney-General, the Governor of Guerrero, the Congress of Guerrero and the High Court of Guerrero. However, the Supreme Court did not establish any criminal responsibility on the part of these officials as under article 97 it can only issue findings upon the matter under consideration.

54. Following the Supreme Court's inquiry, no new investigation has taken place into the killings in Aguas Blancas. The Attorney-General of Guerrero, who had already declared himself incompetent to take up the case, maintained his position that as the arms used were restricted to the Mexican armed forces, under national law the case was a federal matter. The present federal Attorney-General, who at the time of the Aguas Blancas incident headed CNDH, told the Special Rapporteur that the crimes involved fell under state jurisdiction. Although the killings at

Aguas Blancas were carried out with large-calibre weapons, which were reserved for the use of the Mexican armed forces, the police held a collective licence for these weapons while carrying out their duties and were therefore not acting in violation of federal law. The Special Rapporteur was not convinced by the reasons advanced by the federal Attorney-General. CNDH had investigated the matter under article 60 of the law on the establishment of the Commission (Ley de Derechos Humanos) which seemingly corresponds to article 14 of the Basic Law of the PGR giving the Attorney-General the authority to appoint a special prosecutor to investigate and prosecute specific crimes which, because of their importance, interest or characteristics, merit such treatment.

55. After the conclusion of the Supreme Court inquiry, both the Chamber of Deputies and the Congress of the State of Guerrero, as well as the state Attorney-General, concluded that there were no grounds for finding the Governor criminally or politically responsible in the case. In March 1996 Mr. Figueroa had requested to be relieved of his duties in order to facilitate the investigations into the case. On 30 July 1997, the President of CNDH requested that the investigation into the case be reopened, but this has not been done.

56. On 18 February 1998, the Inter-American Commission on Human Rights issued its report 49/97 on the Aguas Blancas case. Based on the information received, the Commission concluded that the events in Aguas Blancas were initiated by the police. It noted that even though significant progress had been made in investigating the crime and bringing those responsible to justice, the progress had been insufficient regarding high government authorities of the State government of Guerrero, whose responsibility is "a clear presumption". The Commission took note of the decision of the Supreme Court concerning the responsibility of the former State Governor and a number of other, named high state officials and that the state Attorney-General refused to take action. Moreover, on 30 May 1996, the federal Congress had exonerated the Governor prior to any legal scrutiny of his actions, thus pre-empting the conduct of impeachment proceedings.

57. The Special Rapporteur notes that before the video of the incident was shown on national television, the authorities had demonstrated little interest in reinvestigating the Aguas Blancas case despite the CNDH report identifying clear irregularities in the investigation. That a number of police officers have been convicted and imprisoned may to a certain extent deter and prevent similar tragedies from occurring in the future. However, the case shows a striking lack of transparency at all stages of the investigation and that those with political influence continue to act with impunity, which again must be seen as further undermining general confidence in the Mexican legal and political system among the population. A legal system which allows impunity for human rights abuses does not act as a deterrent for those who continue to deprive ordinary people of their human rights, including their inherent right to life, through the misuse of their public authority.

E. El Charco, Guerrero, 7 June 1998

58. According to government sources, those killed in El Charco by members of the armed forces were armed. However, the Special Rapporteur received conflicting information from

different government sources regarding the actual course of events in El Charco. Discrepancies also exist in accounts given by witnesses, the families of the victims and non-governmental organizations.

59. On 7 June 1998, 11 persons were shot dead and 5 wounded by members of the Mexican army in an incident which occurred in and around the "Caritino Maldonado Pérez" school in the village of El Charco, State of Guerrero. The Special Rapporteur was briefed extensively about the El Charco operation by the Office of the federal Attorney-General and other government representatives. According to information provided by the former, between 1.00 and 2.00 a.m. an army unit on regular patrol duty in the area discovered a group of armed persons presumed to belong to EPR in the school. The army unit surrounded the school and called upon the people inside to surrender. A group of them ran out of the school shooting in an apparent attempt to escape. The army returned fire, killing nine. In the ensuing firefight, two persons were killed and one wounded inside the house. The remaining 27 members of the group surrendered to the army. These persons were later transferred to police custody. The operation was over by 6.00 a.m. At the scene, the authorities recovered 14 automatic rifles, 1 pistol and 39 ammunition clips.

60. Immediately after the incident, CNDH dispatched a team of investigators to El Charco. Based on its findings, CNDH concluded that there had been an armed clash between the army and elements of EPR in El Charco. The forensic examination of the bodies of those killed revealed that they had been shot from a distance by high-velocity weapons. CNDH found no signs suggesting that grenades or other explosives had been used. The Commission also concurred with the Prosecutor's conclusion that the army had caught the group in flagrante delicto, and therefore there had been no need for a court order or warrant. CNDH maintained, however, that the group, though armed, were asleep when the army surrounded them. CNDH also showed the Special Rapporteur a videotape, said to have been made 24 hours after the incident, showing one of the main suspects, Erika Zamora Pardo, a student, being interviewed by a CNDH investigator. Ms. Zamora admitted that there had been arms in the house at the time of the army operation. However, she also claimed that she had been tortured with electric shocks while being interrogated by the army. Injuries were clearly visible on her feet, but according to CNDH, doctors who had examined her said that they had found no physical signs that would support the allegation of torture.

61. The Special Rapporteur received a considerable amount of information about the events in El Charco from local NGOs. In Chilpancingo, the Special Rapporteur also heard testimonies from survivors of the incident and spoke to family members of the victims. During her visit to the Centre for Social Readaptation in Acapulco, the Special Rapporteur had the opportunity to interview some of the six persons still detained in connection with the El Charco incident, including Ms. Zamora and another student, Efren Cortez Chavez, who also alleged that he had been tortured. They both denied that the group had been engaged in armed activity when they were surrounded. Ms. Zamora maintained that they were asleep and were awakened by the troop movements.

62. The information provided by non-governmental sources and witnesses suggests that a group of some 100 local peasants had gathered in the schoolhouse in El Charco for a meeting to

discuss practical issues relating to their farm work. As it was dark when the meeting was over, around 50 of the group decided to stay in the school overnight. They were asleep when they were awoken by gunfire. Some witnesses said that two people were killed by grenades which were thrown into the house and that another person was wounded by automatic weapons fire. Others denied this. The military then ordered the people to come out one by one, whereupon they opened fire on those who ventured out. Those who managed to make their way out alive were ordered to lie down on the ground, and many of them were ill-treated. Witnesses also described how soldiers summarily executed a number of the civilians while they were lying down. The majority of the witnesses categorically denied that there had been any arms in the school at the time of the army offensive. The families of the victims claimed that some of the peasants killed had never been involved in any peasant movement.

63. The Special Rapporteur notes that PGR had offered to provide her with a videotape, said to have been confiscated at the scene, showing the alleged EPR group engaging in military training with automatic weapons. As of the time of writing the tape had not been delivered, and the Special Rapporteur regrets that this material could not be taken into consideration in the preparation of the present report. Regrettably, the authorities repaired the walls and windows of the building within three days of the operation, thus erasing the physical traces of the incident. The Special Rapporteur also notes that the Human Rights Committee of the Mexican Chamber of Deputies investigated the events in El Charco and concluded that the shootings were massacres and not the result of a confrontation.

64. The Special Rapporteur is in no position to determine all the facts of the incident. All the versions recounted to the Special Rapporteur - except that given by the Government - indicate strongly that excessive force was used by the armed forces. It also appears that the action was planned and that the peasant group was not caught in flagrante delicto. The facts related by CNDH and witnesses confirm this. The allegations by witnesses of indiscriminate firing by the armed forces and of killing of people who had surrendered were brushed aside by the authorities without any serious inquiry into the matter being made. The testimonies heard by the Special Rapporteur led her to conclude that some of the persons present in the school may indeed have been armed; however, to what extent the incident could be characterized as an armed clash remains unclear. The fact that there were no military casualties would not seem to support the Government's claim to that effect. The Special Rapporteur also wishes to stress that even if there had indeed been an exchange of fire, this would not have justified the human rights violations, including the summary executions allegedly committed by the military. The question whether there was armed resistance from inside the schoolhouse is also of little relevance, as the abuses reportedly occurred after the group had surrendered. The Special Rapporteur is convinced that there is a strong case for investigating extrajudicial killings by the armed forces in this incident.

F. Other communications

65. In addition to reports on well-documented and publicized cases of mass killings, the Special Rapporteur also received a great amount of information concerning individual cases of alleged extrajudicial killings and impunity. Many of these cases were at least partly related to the political violence in Chiapas and Guerrero, but there were many others from all parts of

Mexico. The Special Rapporteur notes that while the problem of extrajudicial killings and impunity may be more prevalent in Guerrero and Chiapas, it does seem to exist in almost every part of the country.

66. On 8 September 1997, in the district of Buenos Aires in Mexico City, an armed confrontation occurred in connection with a police raid carried out by the "Zorros" and "Jaguares" units of the Mexico City police. One police officer and one civilian were killed and one police officer and several civilians were injured in the shoot-out. Six young men were arrested at the scene of the incident. Three of them were taken by the police to a sandpit in Tlahuac, where they were shot dead. The other three men were taken to the police base in Balbuena. A few days later the dead bodies of these three men were discovered in the vicinity of Cerro del Ajusco.

67. In reaction to this incident, the Public Prosecutor filed criminal charges against 19 junior police officers for abuse of authority. In its investigations of the case the Mexico City Human Rights Commission found that there were strong reasons to presume that the police officers had not acted on their own initiative, but that the operation had been planned and ordered by senior members of the police command who had then tried to cover up the incident. Accordingly, the Commission recommended that the Public Prosecutor investigate the degree of responsibility for the incident of three senior police officers: the commander of the "Zorros" unit, the commander of the "Jaguares" unit and the commander of the Mexico City motorized police. On 5 June 1998, the High Court of the Federal District ordered the three arrested on charges of withholding information and harbouring criminals. The Court ordered the detention of the commander of the "Zorros" but found that there were insufficient grounds to take action against the other two officers, and they were both released. However, the court did acknowledge that there was evidence suggesting that the two commanders had been aware of the detention of the six victims. The investigation was later reopened, whereupon the two commanders absconded.

68. The Special Rapporteur was encouraged by the vigour with which the Human Rights Commission of the Federal District pursued this case in order to ensure that those responsible for masterminding extrajudicial killings were brought to justice. She regrets that despite its efforts, those accused managed to abscond. NGOs have pointed out that in many of the publicized cases involving influential personalities the accused manage to escape.

69. While in Chilpancingo, the Special Rapporteur was briefed about the case of Mr. Norberto Flores Baños, a lawyer, respected human rights activist and lecturer at Guerrero University, who was murdered in his study on 26 May 1995 and who had been receiving death threats in connection with a child-support case he was involved with. The Special Rapporteur wishes to present this case as an illustration of the lack of transparency in the Mexican justice system which is apparent in the many cases brought to her attention. The Special Rapporteur spoke to the lawyer's widow, who said that at around 10.30 a.m., two men, allegedly officers of the state judicial police, entered Mr. Flores Baños' office and shot him dead. The two assailants escaped in a car driven by a third police agent who had been waiting outside. The three men were later arrested and found guilty of murder.

70. Mr. Flores Baños had been representing Ms. Rosalinda Vargas in a child-support case against Mr. José Rubén Robles Catalán, with whom she had had a relationship. At that time

Mr. Catalán held the position of Secretary-General of the Government of Guerrero. The Special Rapporteur spoke with Ms. Vargas who stated that she had been threatened, and on one occasion abducted and ill-treated, since she filed her case against Mr. Catalán. She also knew of the threats against Mr. Flores Baños. The police inspector who initially investigated the murder case allegedly told Mrs. Flores Baños that there were strong suspicions that Mr. Catalán had been behind her husband's assassination and that because he had found evidence implicating Mr. Catalán he feared for his life. This concern was communicated to the then Governor of the state. Six weeks later, it was reported that the inspector had lost his life in a road accident. The murdered investigating officer had made a video-taped statement presenting the evidence pointing at Mr. Catalán's involvement in the murder of Mr. Flores Baños. However, this material has allegedly not been taken into account in the investigations into the case. It further appears that the case file on the murder of Mr. Flores Baños went missing for nine days before it was anonymously delivered to Mrs. Flores Baños' mailbox. Mrs. Flores Baños had also spoken to a journalist who claimed that he was experiencing unspecified difficulties and that he feared for his life after his newspaper had publicly demanded that Mr. Catalán be prosecuted. Mrs. Flores Baños and the journalist brought this to the attention of the authorities. No notice was taken. The journalist was later murdered in a similar manner to the investigating officer. It appears that no one was ever arrested for the deaths of the two men. Mrs. Flores Baños said that she now receives threatening telephone calls ordering her to abandon her claims against Mr. Catalán. It was further pointed out to the Special Rapporteur that Mr. Catalán was also cited by CNDH and the Supreme Court as one of the persons responsible for the killings in Aguas Blancas. He is not among the persons being prosecuted for that case.

71. While the Special Rapporteur is in no position to examine or determine the merits of the case of Mr. Flores Baños, she notes that the information at hand does suggest serious irregularities and omissions in the investigations. During her meeting with the present Governor of Guerrero, the Special Rapporteur expressed her concern over the wide impunity enjoyed by people in positions of authority, citing the case of Mr. Flores Baños as an example. The Governor shared her concern in this regard, and regretted the practices of the past. He assured the Special Rapporteur that he would ensure complete justice as long as he held public office.

G. Non-State actors

72. The Special Rapporteur received a number of reports describing human rights violations, including extrajudicial killings, attributed to armed opposition groups and other non-State actors. Many of these allegations related to the activities of EZLN, while others were linked to armed groups described as paramilitary groups by those making the accusations. The Constitution of Mexico allows its citizens to have arms in their possession in their homes for their protection and legitimate defence, except weapons expressly forbidden by law or reserved for the exclusive use of the armed forces or national guard. The possession of firearms by private individuals is regulated by law.

73. The Special Rapporteur met families of people murdered by EZLN for their support of the Government or their refusal to cooperate with the EZLN. Many other reports were also given to the Special Rapporteur by NGOs and the families of victims. People seemed fearful and intimidated and reluctant to speak openly against the human rights violations committed by EZLN. The Special Rapporteur recognizes that the Government of Mexico faces a delicate

situation in its dealings with EZLN. Its predicament is obvious: it has signed a peace accord with EZLN and any violation could turn into a serious situation of armed conflict. At the same time, no Government can fail to take action when innocent people are being killed. For this reason, the Government has expressed its eagerness to reopen negotiations with EZLN. The Coordinator for Dialogue and Negotiations in Chiapas expressed his anxiety over the present deadlock. The Special Rapporteur is convinced that a political solution and reconciliation are imperative if the violence is to be brought under control and violations of the right to life in the State of Chiapas are to be brought to an end.

74. EZLN, other groups and individuals complained of killings by what they described as paramilitary groups operating in Chiapas. In the last three years, an increasing number of violent attacks, including killings of members and supporters of EZLN, have been attributed to these armed groups. EZLN vehemently alleges links between the paramilitary groups and the Government. The Government denies this and refers to these groups as "civilian armed groups". The Special Rapporteur invited those making such allegations to provide evidence of the links. She expressed her willingness through the media to be accessible to any group or individual who wished to provide any information relevant to her mandate, including human rights violations committed by the paramilitary groups. EZLN initially showed an interest in meeting with the Special Rapporteur, but eventually decided against it and instead sent her a detailed letter in which it expressed its lack of confidence in the United Nations. Nevertheless, EZLN provided the names of persons said to have been killed by the army and the paramilitaries. It alleged that those involved in the killings of EZLN supporters were rewarded by the Government. Regrettably, it was not possible for the Special Rapporteur to verify these allegations, as she received this information only hours before she left Chiapas.

75. The Special Rapporteur met many private individuals and members of civil society who believed that the paramilitaries were trained and sponsored by the Mexican army. She also received a copy of a manual prepared by the army describing counter-insurgency techniques as evidence of army-sponsored training of such groups. It was alleged that the paramilitaries had easy access to local pro-Government politicians or landowners and therefore enjoyed their patronage. Members of the PRD are also victims of violence by paramilitary groups. They claim that 292 party activists were killed between July 1988 and January 1995, mostly by paramilitaries. It was also pointed out that the paramilitaries were in possession of an abundance of automatic weapons, which would appear to be beyond the means of the ordinary peasant to procure. Mr. Gilberto López Rivas, a federal deputy from PRD recently published a report in which he described the various paramilitary groups and argued that many of these groups had appeared after the army became visibly active in Chiapas.

76. It was also brought to the notice of the Special Rapporteur that the Government was proposing to enact legislation to disarm the paramilitaries. Fears were expressed that such an enactment would grant impunity or amnesty to individuals who had carried out killings. The proposed law was seen as yet another concession to the paramilitaries. None of the sources could, however, provide any substantial or direct evidence of the Government's links to the paramilitary groups.

77. The Government is aware of these allegations, and denies them vehemently. It denounces them as malicious propaganda, and is confident that neither the army nor the local

authorities sponsor paramilitary groups. The above-mentioned manual was explained as a simple instruction for the protection of vulnerable local communities against militant groups such as EZLN. The officials pointed out that procuring weapons in Mexico was not difficult because of the cross-border trafficking of arms. They expressed their resolve to take action against any form of armed group, in accordance with the law. However, one government official admitted that the Government was reluctant to disarm the armed groups in Chiapas as they had to protect themselves and their supporters from EZLN which was well armed.

78. It would be inappropriate to draw any conclusion regarding links between paramilitaries or armed civilian groups and the authorities. The atmosphere in the State of Chiapas is politically charged. To arrive at the truth under such circumstances is not possible, and any comment in this regard would be open to political interpretation. The Special Rapporteur has therefore simply reproduced the information brought to her attention. The existence of armed parliamentary groups, however, poses a grave threat to the lives of ordinary civilians, and the continued presence of such elements can only bring more violence to the already polarized and tense situation prevailing in Chiapas.

H. Human rights defenders, civil society and the media

79. Mexican human rights defenders and members of non-governmental organizations have reportedly continued to receive frequent death threats over the last few years. It appears that human rights activists working in remote rural areas have been particularly exposed to acts of violence and intimidation. After her visit to Mexico, the Special Rapporteur was informed that members of the non-governmental organization Centro de Derechos Humanos "Miguel Augustin Pro Juárez", had received death threats. It was reported that on 3 September 1999 the organization received two letters threatening the lives of its Director, Edgar Cortez Morales, and the Coordinator of the Legal Department, Digna Ochoa y Placido. On 6 September 1999 the Special Rapporteur sent a joint appeal with the Special Rapporteur on freedom of opinion and expression urging the Government to investigate these reports and to ensure the safety of the persons concerned. Later, reports were received saying that on 9 and 14 September the organization had been subjected to new threats, and that more letters of a similar nature had been found in the organization's office in Mexico City. On 17 September 1999, the two Special Rapporteurs sent another joint appeal reiterating their concern at the continuing threats and requesting that the Government inform them of the steps taken in regard to the earlier reports of death threats, cited in their first communication to the Government. The Special Rapporteur is particularly concerned about the recent death threats against members of PRODH and fears for the security of Mrs. Ochoa.

80. On 22 September 1999, the Government replied to the joint appeal of 6 September, stating that it condemned any sort of threats against civil organizations, and adding that officials of CNDH and public security officers had been in contact with representatives of the Centro de Derechos Humanos Miguel Augustin Pro Juárez to agree on measures to be taken to enhance their security.

81. In the past, there have also been numerous reports of death threats directed against Mexican journalists. According to information from non-governmental sources, at

least 81-84 journalists received death threats and four were the targets of attempted murder in the period January 1997 to April 1998. Four journalists were murdered in 1997. The same sources claim that there were 202 cases of violence against journalists in 1998 alone.

82. Before her mission to Mexico, the Special Rapporteur sent a number of urgent letters to the Government calling on the authorities to take all necessary steps to ensure the safety and integrity of journalists who reportedly had received death threats. On 15 February 1999, a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression was sent on behalf of Mr. Enrique Gutiérrez, a reporter with the daily El Sur, who was allegedly assaulted and threatened with death while covering the elections on 7 February 1999 in Acapulco. It was reported that the journalist received the threats from an official of the municipality of Acapulco. Another joint appeal with the Special Rapporteur on freedom of opinion and expression was sent on 26 April 1999 regarding Ms. Carina Ochoa and other employees of the magazine La Guillotina, who reportedly had received repeated death threats in connection with their work as journalists.

83. In Mexico City, the Special Rapporteur met with representatives of NGOs working to protect the rights and position of journalists in Mexico. She was informed that in 1998 the Mexican Academy for Human Rights (Academia Mexicana de Derechos Humanos) launched a special programme aimed at protecting journalists against the violence they faced in their work. Under the auspices of this programme, the Academy established a Commission for the Protection of Journalists, which issued its first report in 1999. In this report the Commission presented five illustrative cases of attacks and death threats against journalists.

84. The cases examined included that of Mr. Benjamin Flores Gonzales, Director of the daily La Prensa, who was murdered on 15 July 1997 in San Luis Río Colorado, Sonora. The day before he was killed, he had published an article about alleged prison privileges afforded to Mr. Jaime Gónzalez Gutiérrez, a leading drug trafficker. Mr. Flores had reportedly also helped the police to identify and arrest the criminal. While four persons were eventually arrested for the murder of Mr. Flores, sources claim that the masterminds of the murder were still free. It appears that a number of other journalists who reported on the case of Mr. Gónzalez Gutiérrez have also received death threats.

I. Women in Ciudad Juárez: gender-based crimes

85. Since 1993, a total of 193 cases of murder, mostly of young women, have been registered in Ciudad Juárez, State of Chihuahua. Girls as young as 15 had been murdered, usually after having been raped and in many cases mutilated. Far more have "disappeared" and do not find mention in the official figures given by the authorities. The Special Rapporteur's attention was specially drawn to these crimes. The families of the victims and almost every women's organization throughout the country had serious misgivings about the authorities' intention to investigate these crimes. Women's NGOs provided press-clippings containing statements by government officials and the state Attorney-General that the victims were females who had "asked to be murdered". It was pointed out that this series of crimes was taking place with impunity because of the inaction of the authorities, on the one hand, and their public statements on the other, which emboldened the culprits. There were serious allegations of gender bias among the authorities and the police.

86. In Mexico City the Special Rapporteur had the opportunity to talk to several families whose daughters were among the victims of these crimes. They all felt that their requests for prompt investigation into the murders had been totally disregarded. Reports summarizing the cases also point at serious shortcomings in the police investigations. Most of the victims were young women who had recently moved to Ciudad Juárez to work in one of the many assembly plants close to the border with the United States of America. Others were students who had taken part-time jobs to finance their education. In many of the cases described in detail to the Special Rapporteur, there were no or cursory investigations and the family members of the victims had been treated with indifference and arrogance by the authorities. Some sources suggested that the authorities had been actively trying to cover up some of the cases. The integrity of the victims was attacked and given as a justification for the murders. Many families complained that they had not even been informed that the dead body of their relative had been recovered. They usually learnt of the discovery through the press and had to wait for days before the body was handed over to them. Others complained that the police often dumped the mutilated and decomposing bodies on their doorsteps with disparaging remarks about the victim. Family members and a number of women's NGOs claimed that the authorities were protecting influential personalities.

87. On 23 July the Special Rapporteur travelled to Ciudad Juárez, where she held discussions with officials of the state Attorney-General's Office, including the Special Prosecutor very recently appointed to lead the investigation. She also met with representatives of the business community in the city, most of whom were managers of the assembly plants where many of the victims had worked. Discussions were also held with trade union representatives and lawyers.

88. The Special Prosecutor admitted that in the past the authorities might not have investigated the cases with the efficiency and vigour they deserved. However, the Special Prosecutor assured the Special Rapporteur that the new team from the Prosecutor's Office, which had taken over the investigation in October 1998, was working hard to remedy past mistakes and that considerable progress had recently been made. She also said that a counselling programme had been put in place to assist the families of the victims.

89. The Special Rapporteur noticed that the deliberate inaction of the Government to protect the lives of its citizens because of their sex had generated a sense of insecurity amongst many of the women living in Ciudad Juárez. At the same time, it had indirectly ensured that perpetrators would enjoy impunity for such crimes. The events in Ciudad Juárez thus constitute a typical case of gender-based crimes which thrive on impunity. The arrogant behaviour and obvious indifference shown by some state officials in regard to these cases leave the impression that many of the crimes were deliberately never investigated for the sole reason that the victims were "only" young girls with no particular social status and who therefore were regarded as expendable. It is to be feared that a lot of valuable time and information may have been lost because of the delays and irregularities. On the other hand, the Special Rapporteur is encouraged to note the dynamism shown by the new Special Prosecutor and the apparent change in attitude among the officials now conducting the investigation. For that reason, the Special Rapporteur is reluctant to include these killings as falling strictly within her mandate on extrajudicial, summary or arbitrary executions. At the same time, in view of the special nature of these crimes, she has brought the incidents to the attention of the Special Rapporteur on violence against women.

J. Violations of the right to life and sexual orientation

90. In her report to the Commission on Human Rights at its fifty-fifth session, the Special Rapporteur expressed her concern at continuing reports of persons having been killed purely because of their sexual orientation. She noted that owing to the widespread social stigmatization of persons belonging to sexual minorities, violent acts directed against them were more likely to be committed in a climate of impunity. While preparing for her mission, the Special Rapporteur was informed of a number of cases in which homosexual men had been killed in Mexico. It was reported that the authorities had dealt with these crimes in ways that allowed them to be committed with impunity. In Mexico City she was further briefed on the subject by the NGO Citizens' Commission against Homophobic Hate Crimes (Comision Ciudadana contra los Crimines de Odio por Homofobia).

91. According to information provided by this organization, in the period January 1995 -May 1997, at least 125 persons were murdered because of their sexual orientation, 120 of them men. Sixty-five of the cases were reported to have occurred in the capital alone. It appears that the majority of the victims were killed in an extremely violent and brutal way: their bodies were often found naked with hands and feet tied and with signs of torture, stabbing, strangulation or mutilation. Concern was also expressed that the prejudiced attitude of the authorities, together with tendentious media reports, had contributed to an atmosphere of impunity and indifference about crimes directed against members of sexual minorities.

92. The Special Rapporteur brought these concerns to the notice of the authorities and the Human Rights Commission of the Federal District. They claimed that the authorities did not discriminate against anyone on the ground of sexual orientation in the matter of investigation or in bringing the perpetrators of crimes to justice.

K. Capital punishment

93. While Mexican law does provide for capital punishment, no death sentences have been implemented since 1937. Under article 22 of the Mexican Constitution, the death penalty may be imposed for the crimes of treason during war with a foreign country, parricide, aggravated or premeditated homicide, kidnapping, highway robbery, piracy and serious military infractions. The same article further expressly prohibits the use of the death penalty for political offences. None of the penal codes of the constituent states provides for capital punishment, where it remains in force only under military law. While in Mexico, the Special Rapporteur wrote to the Minister of the Interior seeking clarification in regard to a statement attributed to his predecessor, suggesting that the Government was considering reintroducing the use of the death penalty. No written response was received to that communication. However, in meetings with the Special Rapporteur, government officials denied that there were any plans to change the current policy in regard to capital punishment. The Special Rapporteur was also informed that CNDH was considering proposing an amendment to the legal provisions on capital punishment "aimed at a better human rights protection". The Government has also indicated the possibility of ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

IV. CONCLUSIONS

94. Mexico is passing through a difficult period as the country's progress is being marred by political polarization and violence. Urgent preventive steps need to be taken to defuse tensions and bring down the level of violence in order to protect the security and lives of innocent civilians who suffer at the hands of the police, the armed forces, the paramilitary and armed opposition groups.

95. The Government of Mexico has the potential to overcome the obstacles it faces in protecting the lives of the citizens of Mexico and others living there. The Government has the administrative mechanisms to control the situation. It also has an idea of the roots of the problem and has made attempts to address the three key areas of access to justice through changes in the legal and judicial system, promotion of the democratic process by introducing electoral and other reforms, and strengthening local communities by trying to initiate dialogue and attempting economic and political empowerment. The challenge lies in pursuing these policies with determination and sincerity.

96. There is strong popular support for justice and for an end to the culture of impunity. Mexico's resilient civil society is its greatest asset. The determination of its various elements to uphold the human rights norms is apparent and inspiring. The Special Rapporteur notes that the civil society, including NGOs, the media and private individuals, has often been instrumental in pressing the competent authorities to launch inquiries into incidents of extrajudicial killings or to reopen investigations into cases already considered closed.

97. The Government has taken some initial steps to guarantee the right to life of all persons, as laid down in article 6 of the International Covenant on Civil and Political Rights. Unfortunately, these positive undertakings have not been sufficient to correct the situation, as extrajudicial killings and the impunity enjoyed by the perpetrators continue. The incidence of violence and killings remains widespread, although there has been a discernible decrease in the last year. The federal Government cannot hide behind "federalism", as it did in the case of Aguas Blancas, in order to extend impunity to influential persons. The Government has a juridical responsibility to ensure that international treaties and standards are applied, even when the national legislation places the human rights violation under the jurisdiction of the regional or state-level authorities.

98. The ineffectiveness of the justice system has given rise to violations of human rights. Their lack of jurisdiction to try members of the armed forces for violations of human rights committed against civilians erodes the independence of the ordinary courts. The Special Rapporteur on the independence of judges and lawyers might be invited to make a comprehensive analysis of the judicial system in Mexico.

99. Paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that: "Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats."

The conduct of the state authorities at the highest level before, during and after the massacre in Acteal was clearly not in accordance with this fundamental principle, and those responsible for serious omissions and neglect were not held accountable.

100. Article 3 of the Code of Conduct for Law Enforcement Officials provides that "law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty". This provision is of particular relevance in the context of the incidents at El Bosque, Aguas Blancas and El Charco, in which there are strong indications that government forces used excessive and disproportionate force in a deliberate and planned manner, resulting in a number of extrajudicial killings.

101. The practice and conduct of federal and state prosecutors' offices fall short of the guidelines laid down in paragraphs 12 and 13 (b) of the Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Under article 12, "prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system". Paragraph 13 (b) provides that: "In performance of their duties, prosecutors shall: ... protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect". In the case of Aguas Blancas, reinvestigation has not taken place despite the findings of the Supreme Court of Mexico. In the cases examined by the Special Rapporteur in this report, the investigations were compromised inter alia owing to lack of transparency, deliberate cover-ups, selectivity in apprehending suspects and peer pressure among the legal establishment. The discretion placed with the public prosecutor to decide whether an investigation can be initiated in a criminal matter has resulted in gross injustice, resulting in impunity for perpetrators of human rights violations.

102. There is a reluctance on the part of the competent Mexican authorities to hold members of the military forces accountable for extrajudicial killings and other human rights violations. This tendency was particularly noticeable in the incident at El Charco. Ordinary courts cannot try members of such forces for violations of human rights, even when the victims are civilians. The prosecution of military personnel is in the hands of the Military Attorney-General who is subordinate to the Ministry of Defence. The Special Rapporteur is concerned that this situation, combined with peer pressure and misconceived collegial loyalty, may work to the detriment of civilian victims and their families and seriously circumscribe their opportunities to have their cases heard before a competent, independent and impartial tribunal, as provided for in the Basic Principles on the Independence of the Judiciary.

103. The continuing threats against the lives of human rights defenders suggest that the Government has not, despite its declared commitment to do so, taken adequate steps to provide these persons with protection and eliminate threats to their security. The Special Rapporteur commends the work done by NGOs, often under difficult circumstances. She notes, however, that many of these organizations work in situations of violence and in a polarized political atmosphere, in which they sometimes find it difficult to maintain an image of neutrality and thereby risk losing their effectiveness in building confidence amongst estranged communities.

V RECOMMENDATIONS

104 The Special Rapporteur urges the Government of Mexico to continue the process of reform it has initiated Fundamental changes are essential in addressing structural causes of violence At the same time, institutions and the administrative machinery need to be reoriented and strengthened in order to uphold human rights standards

105 The Government should be encouraged to take advantage of the support it has received from the international community for its initiatives aiming towards a human rights-oriented governance and political process The heightened tension in the period leading up to the general elections in 2000 can lead to violence Such situations can at times be saved by agreeing to some legitimate form of international presence In this regard the Government should consider inviting international observers to the general elections to be held in the year 2000

106 The Special Rapporteur welcomes the Government's readiness to reopen dialogue with political armed groups like EZLN and to consider granting more autonomy to localities inhabited by indigenous communities in order to end tension The Government must use all the skills at its disposal to break the deadlock in the talks between itself and EZLN so that the threat to the lives of ordinary civilians can be removed

107 The Special Rapporteur recommends that the Government of Mexico

(a) Adopt effective measures to protect the lives of human rights defenders, including journalists, in conformity with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Internationally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly in its resolution 33/144 of 9 December 1998 Such measures should include efforts towards promoting an atmosphere conducive to the development of civil society and the protection of human rights;

(b) Ensure the demilitarization of society and avoid deputizing the armed forces to maintain law and order or to eradicate crime;

(c) Take measures to strengthen the independence of the offices of the public prosecutors, from the federal to the local level;

(d) Grant the victims of human rights violations or their families a legal mechanism by which they can file criminal complaints, independent of the Public Prosecutor's Office;

(e) End the impunity enjoyed by certain privileged categories and classes of people;

(f) Initiate reforms aimed at ensuring that all persons accused of human rights violations, regardless of their profession, are tried in ordinary courts;

(g) Continue human rights training and awareness-raising among the police and members of the armed forces;

(h) Strengthen CNDH and state human rights commissions, including the Human Rights Commission of the Federal District. They should be encouraged to have regular interaction with the members of the security forces;

(i) Repeal laws which provide for capital punishment so that the de facto situation is recognized in law. The Special Rapporteur also calls upon the Government of Mexico to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

108. Finally, the Special Rapporteur wishes to acknowledge that these recommendations are by no means exhaustive or original. They are being discussed regularly in Mexico by the Government, the civil society and the press. She simply wishes to emphasize the urgency in implementing these measures in time to save precious lives.